

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

GEM PRODUCTS, INC.

Debtor

No. 02-16670

Chapter 11

GEM PRODUCTS, INC.

Plaintiff

v.

Adversary Proceeding
No. 04-1220

PRESTIGE SALES CO., INC.,

Defendant

MEMORANDUM

Appearances: Richard T. Klinger and Robert Jeffrey Wolford, Kennedy, Koontz & Farinash,
Chattanooga, Tennessee, Attorneys for Plaintiff

Kyle R. Weems, Weems & Ronan, Chattanooga, Tennessee, Attorney for Defendant

HONORABLE R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

Defendant Prestige Sales has filed a motion to alter or amend the court's order denying Prestige's amended motion for summary judgment. Before Gem Products' bankruptcy, Prestige delivered goods to Gem and then demanded their return, but Gem paid for the goods instead of returning them. Gem brought this suit to recover the payment as a preferential transfer. Prestige's amended motion for summary judgment depended on convincing the court that: (1) Prestige had the right to reclaim the goods when Gem paid the bill, or (2) Prestige had the right to reclaim, and it was a statutory lien.

Prestige's motion to alter or amend rehashes its argument that the right to reclaim under Tenn. Code Ann. § 47-2-702(3) is a statutory lien. The court stands by its earlier conclusion that the right to reclaim is an equitable remedy, not a statutory lien. 11 U.S.C. § 101(37), (53) (definitions of lien & statutory lien).

Prestige's motion to alter or amend is somewhat confusing, but it also seems to argue that the court's decision allowed Gem to assert the rights of a hypothetical bona fide purchaser or the rights of an existing bona fide purchaser, Allfirst Bank. The court did neither.

The right to reclaim could create a successful defense only if Prestige actually could have reclaimed. The court concluded that Allfirst Bank had a security interest in the goods, the security interest had priority over Prestige's right to reclaim, and therefore, Prestige could not have reclaimed the goods. Nevertheless, the court assumed for the purpose of argument that Prestige might still have been able to reclaim all or part of the goods if the value of the Bank's collateral was more than the amount of the secured debt. Gem presented evidence tending to show the opposite, that the Bank's collateral was worth less than the secured debt. Therefore, the court could not grant summary judgment to Prestige. The court's reasoning did not allow Gem to assert the Bank's rights as a bona fide purchaser or the rights of a hypothetical bona fide purchaser. The court only judged the true effect of Prestige's right to reclaim according to the apparent facts at the time the right could have existed.

The court's opinion also pointed out another genuine issue of material fact as to Prestige's right to reclaim: whether Gem's use of the goods made them no longer reclaimable.

The result, of course, was that the court denied the amended motion for summary judgment. The court stands by that decision and will enter an order denying Prestige's motion to alter or amend.

This Memorandum constitutes findings of fact and conclusions of law as required by Fed. R. Bankr. P. 7052.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

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ORDER

In accordance with the court's Memorandum entered this date,

It is ORDERED that defendant's motion to alter or amend judgment (Docket No. 19) is denied.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE